

Review



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A REVIEW OF THE CASE  
OF  
MRS. ELIZABETH HEGGIE.  
HOMICIDE—INSANE DELUSION.

(From the *American Journal of Insanity*, for July, 1868.)

On the fifteenth day of June, 1864, Charlotte L. Heggie, a daughter of James M. Heggie and Elizabeth Heggie, of Ithaca, Tompkins county, in the State of New York, died at her father's residence, at the age of twenty-one, after a short illness; and under circumstances so like those attending the death of an elder sister, Mary, about eight months before, and otherwise so suspiciously, that the coroner deemed it necessary to hold an immediate inquest to ascertain the cause of the death. A *post mortem* examination was made, and the verdict of the jury was death by poison; and the coroner, on the advice of the district attorney, at once apprehended Mrs. Elizabeth Heggie, the mother, on suspicion of having administered the poison.

It is not our purpose to examine the evidence proving the fact of the poisoning, and fastening it upon the alleged culprit. These points are assumed to be conceded. They do not seem to have been very tenaciously disputed by the counsel for the defence, and may, indeed, be fairly considered as confessed by the culprit herself. The crime, however, was so horribly unnatural as at once to impress many minds with a conviction, either that it was not possible that a mother should have committed it, or that, if she had, she was unquestionably insane.

The case so far as it calls for any notice from this Journal, depends upon the question of insanity as disclosed by the voluminous evidence. We have carefully perused the whole, as well that on the preliminary as that on the main issue, as it was minutely taken down by an official reporter; and shall give such a condensed abstract of it as will cast an impartial light on the question that specially concerns us.

The whole life of the defendant was retraced with much particularity on both issues. The preliminary issue was tried in April, 1865, in the county where the offence was committed, and occupied five days. The difficulty of obtaining an unbiased jury on that occasion, grew, in consequence of the increased publicity and agitation of the matter, into an impossibility of doing so on the trial of the main issue, compounded of both the guilt and the insanity. To try this, the whole panel of jurors summoned was first exhausted, and then the whole jury list of the county; and out of the whole three hundred or thereabouts, not twelve men could be found, who were not excluded either by peremptory challenges, or for confessed or presumed bias. It was therefore determined to try the case in Cortland county. Both trials were before Justice Mason, of the Supreme Court, now of the Court of Appeals. The government appeared by Cochrane, Attorney General, on the preliminary issue, and by Martindale, his successor, on the main issue, assisted by Mr. Wilson, District Attorney of Tompkins county, on both. The defence was managed by Mr. Tremaine as leading counsel.

The preliminary trial decided simply the question of present sanity, after the hearing of several medical experts, by a verdict that the culprit was then sane; by which was meant that she was legally capable of a defence on her trial: that, in other words, she did not,



in the judgment of the jury, fall within that humane provision of the statutes, that "no insane person can be tried, sentenced to punishment, or punished, for any crime or offence, while he continues in that state."

The principal testimony given on the preliminary issue was substantially repeated afterwards (excepting that of Dr. Butler, of Hartford,) on the trial in chief; and it is therefore unnecessary further to refer to it, except possibly to explain or elucidate the meaning of the witnesses, or to note variations in their testimony.

The trial of the main issue was held in Cortland county, in May, 1866, about two years after the homicide, and occupied about ten days. The plea of insanity was interposed for the substantial defence. The uncontroverted, proved, or admitted facts were these:

Elizabeth Heggie, whose maiden name was Kendall, was born in December, 1818, at Wilkesbarre, Pennsylvania. She was a third or fourth child. Her maternal grandfather was reported to have died insane, and one of her brothers was insane twice at intervals. Her mother was in low spirits, and often found weeping, just before Elizabeth was born. One cause assigned was a pecuniary misfortune of the family that happened about that time, and threatened distress. In her advanced years she had a profound faith in electricity, as a medical panacea, and in her success in applying it; which was adduced as an evidence of her tendency to insane delusions.

When three or four years old, or when she was old enough to be about, Elizabeth was picked up one day in a senseless condition, on the ground, at the foot of a flight of outside-stairs, without a railing, leading to the second story of the dwelling, from the top or some tread of which stairs she was supposed to have fallen. Prior and subsequent to that event, during her childhood,

she had convulsions or fits. When found, her head was swollen from a blow, and she was at first suspected to be dead. After recovering from that, she grew up without much association with playmates, and without much fondness for childish social amusements. She is described as "a poor, sick, puny child," "too weakly to go to school for years," "always stupid," "often alone amusing herself." She was sly, suspicious, and a listener. She stealthily pinched little children. She was no favorite with her sisters, and was rather shunned by them and by the family generally as a disagreeable child.

At about twelve, she went to school for two or three quarters; and her teacher reports of her that she was not appreciative, but dull and taciturn; not playful; and at times showing a sad and sullen spirit. "She was not a particularly bad girl, was not quick to learn, and was not troublesome. She found it difficult to commit the multiplication table, but read and wrote."

At about eighteen, she was married; and became afterwards the mother of nine living children, (having two and probably four miscarriages,) the intervals of birth varying from thirteen to eighteen and twenty-four months. She was kind to her children, and vain of them, while they were young; but as they grew up, treated them with short speech and unkindness, showing some favoritism. She was a notable housekeeper, dispatchful and laborious, and showed good taste and thrift in her purchases for the household. She was of a quick temper. In her family, and in her intercourse with her sisters and their families, she was moody; sometimes lively and sometimes sulky; muttering when alone; frequently in tears; shutting herself in her bedroom for hours when something went wrong, or she was thwarted in her expectations or intentions; complaining



frequently, for eight or ten years before her trial, of headaches (which the family physician says were sometimes nervous and sometimes sick-headaches, but not more frequent with her than with many women) and of want of sleep; sometimes expressing herself as having no friends, and wishing she were dead.

As her children grew up, particularly her daughters Mary and Charlotte, she had frequent petulant, abrupt, and hard words with them; chiding them harshly and threateningly, violently wrangling with them, and denying them company; on one occasion locking them out, on another cutting off the gas to drive away their visitors, and on another putting her silver and linen under lock and key that it might not be used by them during her temporary absence. They were now young women of marriageable years. She frequently expressed a suspicion that they were supplanting, or intending to supplant her, in the management of household affairs, and on one occasion, at least, wished they were dead. When she heard that Charlotte was about to return home from a visit to the west, she wished the cars might "smash up" on the way. To her family and relatives she showed peculiarities and traits that do not appear to have been observed by her less intimate acquaintances. They speak of a glaring eye, a downward look, and a silly, idiotic laugh which accompanied silly and unmeaning remarks; of her little or no conversation; of her untruthfulness, inconsistency, and self-contradictions; of her remarkable fondness for seeing funerals and horrible events, hurrying forward unseemly to be the first to see a corpse, and curious about sad accidents. These traits were not observed much, and many of them not at all, by mere acquaintances and neighbors on terms of ordinary social intimacy, or by those she met in shopping or otherwise casually.

Her conduct seems, during all her life, to have been mortifying to her sisters when in her company in the presence of others, and she took much to heart little criticisms and corrections of her daughters respecting her modes of expression in her table talk. On one occasion, when there was a turkey for a dinner, she used the word "stuffing," and her daughter Charlotte said "you mean *dressing*, mother," she rose indignantly from the table and left the room. On another occasion, when she was complaining to one of her sisters of her children not treating her well, saying "they wanted to run over her," the sister replied that "if she would treat them as a mother ought to, and not be always finding fault with them, they would treat her differently," she was so much offended that she would not speak to her again "for months." "She disagreed with all her friends." She was a professor of religion, a member of a religious society, and a pretty regular attendant on divine service. She was not apparently much enlightened on religious matters, and could not be engaged in much conversation respecting her spiritual state. She participated in the benevolent labors of a sewing society, taking some pride in entertaining it at her residence, as well as in entertaining visitors.

As has been intimated, most of the singular traits of looks, manners, and character thus far detailed, were testified to by the family connections of the defendant, who were naturally concerned for her exculpation, if not from particular affection for her, from a desire to prevent a great family disgrace.

There does not appear to have been any recurrence of the fits or convulsions that attended her infancy, after the age of puberty, or from before the time she attended school (about twelve) until on one occasion five or six years before the trial. She then attended a Sunday



morning service at the Baptist Church, instead of her own, and was seized there with a fit or convulsion, accompanied by a shriek that startled the congregation. She was forthwith carried by the sexton into the vestibule, seated on a chair, and a physician was sent for. He found her apparently going into a sleep. She said nothing, and he did not know whether there was any consciousness. There were some slight convulsions. Her breathing was hard at first, but soon became more natural. Her pulse was full and rather strong; but gradually subsided in its force and violence. He did not think it was decidedly a case either of epilepsy or of hysterics. She would not answer his questions. She seemed unable to support herself, and leaned against some persons by her as she sat in the chair. Her eyes were closed; the mouth not drawn open. The symptoms were such that he thought she would soon go to sleep. In that condition she was taken home, he going with her and the sexton in a carriage. She partially assisted herself into the house. He remained about half an hour or more, and when he left thought she was asleep. He did not visit her again. She soon recovered. The sexton says that while she was sitting in the chair in the vestibule her eyes were shut, and when she was put into the carriage they were open. As some stress was laid upon this occurrence to color the defence, it is necessary to add that she herself afterwards explained it sufficiently perhaps, if truthfully, when she told the sexton that she and her husband had quarreled that morning, and that was the reason why she had gone to the Baptist Church instead of going with him, and "while thinking over what had happened she got so mad she could not hold herself; but," she added, "I knew what I was about all the time."

Respecting her conduct just previous to and during the last illness of Charlotte, there is much testimony bearing upon the question of her guilt, and perhaps no less important as touching the question of her sanity. It is therefore given with more detail.

The defendant had been with her husband on a visit to New York, where they had spent a fortnight. The morning after they returned, the mother, finding that the table linen had been used, inquired of a younger daughter, whether Charlotte had had company during her absence; and being informed that she had, remarked that "the next company would probably be her funeral." Within a day or two after, Charlotte was taken sick, and the family physician was called in by a hurrying message from the mother, who opened the door for him the moment he touched the door-steps, and immediately on his entering closed the door upon him, and requested him in an anxious voice to tell Charlotte that "her *father* had sent for him;" assigning, when questioned, for a reason, that "she would not follow his prescription unless she thought her father sent him." To his question what was the matter with Charlotte, she said, "she was very sick, that she was just as Mary was, and that she did not believe that she would ever get well." To his surprise, on starting to ascend the stairs to her room, he saw Charlotte at the head of them, dressed for the day, who insisted on coming down to the sitting room. On examination he found her pulse rapid and small, her tongue of a grayish color with redness at the tip and edges. She said she had been at the club room, (where were meetings to do work for the soldiers,) the day before, and had vomited freely, and felt better; but after supper time, was taken again, and suffered severely in the night by burning pains in her stomach and griping of the bowels. She had taken little dinner, and no



supper. He prescribed for her, and, as he was leaving, asked, before the mother, if he should call the next morning. Charlotte said she thought she would be well then, and expressed a reluctance to take the medicine he left with her. The mother said, if she was not decidedly better in the morning, they would let him know. He was not sent for again. This was Friday.

After the physician left, a female cousin came and stayed with Charlotte during her sickness. They walked out together after tea that day. At night, Charlotte took the medicines as prescribed (first, one powder consisting of calomel and rhubarb, and afterwards a Dovers powder,) expressing a reluctance to do so, and a wish that she might have a homœopathic physician. During the night, she vomited and purged four or five times, and the next morning she was quite weak. The same day she ate a small bit of toast and drank some black tea in the evening, which was poured out at the tea table by her mother, and handed by her to Charlotte. She had taken black tea on one or two occasions before that at the table, and had complained that it gave her an ill-feeling. Her mother had said that she thought it would be better for her than drinking so much cold water. She vomited some of it. On Saturday or Sunday evening, her mother prepared some fresh black tea, and wished the cousin to urge Charlotte to drink it. Charlotte took some of it, but did not retain it. She rested better Saturday night than the night before, with less vomiting and purging. She had complained for some time of a distressed feeling in her stomach. She dressed herself, with assistance, Sunday morning; but seemed very weak, and her illness increased. Some panada was prepared for her by her cousin; but she took very little of it, and drank occasionally of the black tea, but did not retain it. The

sickness and vomiting continued through Sunday and Sunday night, with less violence. The mother went to church Sunday morning. Monday morning, she went out and bought half an ounce of arsenic at a druggist's, saying to him that "the arsenic she got before was not very good, and she wanted some better than that." She had bought some the Saturday before at another shop. The druggist, after learning from her that she used it on bread and butter to poison rats, told her to use it with Indian meal. She then voluntarily spoke to him of the illness of her daughter, saying that "she was taken sick very much as Mary was, and she feared she would not recover." During this Monday morning, the cousin prepared some gruel at the mother's request, she supplying the materials,—Indian meal, salt, and water,—saying "she did not know just how to do it, and preferred that she should make it." It was made and left to cool. Charlotte tasted it, and said it tasted good, but would take but little for fear it would make her sick. In the afternoon, the cousin found the mother herself preparing some gruel, and asked her what she was doing. She replied, "she was preparing some new, for the other was too salt, and Charlotte did not wish her to tell the cousin so." She said she had thrown the other away. While she was preparing this, a younger daughter came in from school, and on saying she had been to see a gravestone which was ordered for Mary, the mother said "they would have to make another for Lotty before long." This new gruel was put on the stand, and Charlotte took some of it that afternoon, at two or three different times. She complained that day or the next of its irritating her throat and stomach. She also partook of some oyster broth prepared by her father. She seemed to rest quite easy Monday night. Her hands and feet were cold from the first of her sick



ness. On Tuesday, in consequence of her complaints of her throat and stomach, her homœopathic physician prescribed a preparation of marsh-mallows to relieve the irritation. She could not retain anything on her stomach. The cousin was absent during the forenoon, leaving Charlotte in the care of her mother; and on her return, at noon, did not find her any better. She took no medicine except the throat wash, which she spoke of as producing a pleasant sensation in the mouth. The gruel was not continued. She was very restless and delirious all Tuesday night, complained of an inward burning, and threw herself from side to side of the bed; and in the morning of Wednesday the coldness of the extremities was particularly observed. She was very much worse, very delirious, took no nourishment, and, between nine and ten o'clock, died.

Just before her death, while the mother, one of her sons, and others of the family and attendants were about the bed and in the room, the son said to his mother, "Mother, God Almighty knows you had a hand in this!" to which she made no reply. When she died, the mother was weeping violently. The son, on passing out of the room remarked to her, "Woman, you will have something to reflect upon!" to which no reply was given.

Three or four hours after the death, the mother went out into the woodshed, a sort of out-kitchen, where a woman accustomed to do occasional house-work for the family, and who had been sent for to aid them that day, was at work; and placing her hand on the table, said, "she had another affliction,—a hard one," and asked the woman, "Did I not show you arsenic on Monday?" The reply was "No." She rejoined, "Yes, I did." The reply was, "No, if you had I should have remembered it;" to which she rejoined, "I did, but you

were confused." She continued, "I was up street, and got sixpence worth of arsenic,—that it would not mix with Indian meal, and that she had put it on bread and butter." The woman exclaimed, "You don't think Charlotte got the bread and butter!" "No," she said, "but I am glad Bell Kendall (the cousin) had the handling of the medicine." The woman replied, "I hope you don't think Bell gave her any thing." "Oh no!" she said, "but she was glad Bell had the handling of her medicine." The woman added, "I hope you don't think people will censure you," and she replied, "Oh no, but she was glad since it had come to this, and she and her husband thought that Mary and Charlotte took the arsenic to whiten their complexion." The talk was then interrupted by some one calling the mother. It may be added here as a coincidence in regard to the two deaths, that just before Mary's death the mother had bought arsenic.

The calling away of the mother which broke off this conversation was to get her directions for a person waiting to receive them respecting a shroud which she had already ordered for Charlotte's burial. The direction she gave was that it should be "just like Mary's." On one occasion during Charlotte's sickness, while confidently predicting the day and almost the hour of her death, she had remarked, "How splendid Mary was laid out—she looked like a bride," and almost in the same breath that "she did not like burying so many of her good clothes."

There is not much disclosed in the evidence respecting the daughter Mary. It appears that she did not take with forbearance or respect her mother's frequent chidings and coarse, sharp talk, but responded in a like strain and temper, and rather defied and evaded her attempts at discipline. It is shown of Charlotte that,



in general, she was respectful, patient, and filial, although on one occasion she had a violent altercation and personal struggle with her. "She was a bright, intelligent, very pretty girl, and of a good disposition;" but she seems to have felt that her home was a very unhappy place; and when she was summoned by her father to return from a pleasant sojourn in the west "she felt as if a dagger were thrust into her." "Both these daughters," says a maternal aunt, "were fond of society, were educated, accustomed to visit among educated people, and desired to have that class of people visit them."

During the mother's confinement in the jail, she was frequently visited by medical men, and was also of course frequently in communication with the jailor and his wife. From their several testimony it appears that "the ingratitude of her children was the great trouble on her mind." The physician who attended her says that she always complained of her head the first thing; that he observed nothing peculiar about her eye, and never saw her smile or laugh. She never denied the murder positively; but she said that "if she had done it, it was done without knowledge how she came to do it, or anything about it." He detected her in positive falsehoods. She was constantly curious to know whether her visitors were for her or against her. She told the jailor's wife that she hoped to be sent to the Asylum; thought she could be cured in about six weeks or two months; "she was not so bad as she had been;" also, that her counsel and her friends assured her "it would all come out right." She played April Fool's jokes on the jailor; she criticized the testimony on the preliminary trial; called for the village papers and "Frank Leslie;" wanted a new flower border for her bonnet, and some coloring stuff for her hair. She was

deceptive as to her physical condition, claiming, for instance, to be constipated, when there was demonstrative evidence to the contrary, and prevaricating about her medicines.

On the question of sanity, there was a conflict in the opinions of the medical experts who were summoned as witnesses.

Dr. Butler, Superintendent of the Hartford Asylum, who appeared only on the preliminary trial, was not convinced that the defendant was insane; but the evidence showed him that there was a state of mental unsoundness and debility which created in his mind a strong doubt of her sanity. He considered her as a proper subject for an asylum, where the doubt might be solved. He had no decided evidence of ancestral taint, but had of collateral insanity. If it was a case of insanity, it was neither *mania* nor *melancholia*, and was not sufficiently defined yet.

Dr. Brown, physician of the Bloomingdale Asylum for the insane in New York, and for eighteen years connected with hospitals for the insane, drew from the evidence the opinion, which he expressed unreservedly and with the consciousness that perhaps some measure of professional reputation might be at stake, that the prisoner was insane at the time of the alleged homicide in June, 1864. She came from a family in which there was a good deal of insanity, suffered from convulsive disease in early life, had been subject to moody fits throughout life, and then, coming to the evidence connected with the homicide, he interpreted the views which she was said to have expressed as to the measure of authority which she said her daughter was inclined to assume in the household, by usurping her place at the head of the female department of it, as indicating an irrational and insane view of the facts, and as consti-



tating, in connection with the course she took to remove the daughter from the opportunity of taking her place, an insane delusion; especially when he considered that the maternal instinct is one of the strongest influences of the human mind, and that the mother will do anything for her offspring and submit to any sacrifice for them. He attached very little importance to any single symptom isolated from all others, but preferred to group them together to make a whole, from which to form an opinion. Had there been no sleeplessness in the case, it would not have changed his opinion. He assumed the fact that she was indulgent, fond of her children, and vain of them; glad to have them enjoy themselves; as the basis of her ordinary mode of feeling and acting towards them. He regarded her as always having been a nervous person, but not insane; but had not formed the impression that she had ever been a healthy person. In some cases of *melancholia* or *dementia*, insanity may exist without delusion. He supposed, that at the time of the homicide, the real state of affection between the mother and daughter was different from what it was before. To a question of the Court: Is this a case of insanity without delusion? he replied that he was unable to say; he thought there was a delusion consisting in her belief that the daughter was likely to usurp her own proper measure of authority, and there was no adequate reason for it. He took the evidence as showing an entire absence of convulsions since infancy. To another question of the Court, he said that great and prolonged *melancholia* constitutes a form of insanity whether any delusion can be discovered or not; so that a person may be pronounced insane without any delusion. This was not a case of that kind. He regarded the supposed usurpation of the daughter as the particular in which the

delusion, in his judgment, appeared. Her variable and moody disposition he supposed to represent her natural temperament and ordinary course of feeling and conduct. He did not regard her as insane on general subjects; *monomania* was a much more rare species of insanity than the world at large understands; but he thought it a case of partial insanity. On the evidence he had heard he was willing to regard it as a case of insane delusion. He supposed that she understood the nature of the act.—After hearing the rebutting evidence he adhered to the same opinion he had before expressed.

Dr. Cook, physician of the Asylum at Canandaigua, New York, (who had testified on the preliminary issue,) was of the opinion that the defendant was of unsound mind in June, 1864. An inherited predisposition to insanity,—a nervous convulsive disorder in infancy, resulting in modified or perverted development of the mind, as shown by her feebleness of body and mind in early life,—her slowness to learn,—her inability to acquire more than the simplest forms of knowledge,—the peculiarities of her childhood,—the emotional disturbances extending over the whole period of her married life, but more marked of later years, exhibited by alternate depression and exhilaration, by her frequent fits of weeping and laughing, by her cordiality alternating with reserve towards her friends,—her irritability towards her children,—the indications of mental unsoundness as shown by her impaired intelligence,—her mutterings when she was not conscious of being observed,—the exaggerated importance which she attached to ordinary and trifling events,—the distrust and suspicion with which she in turn regarded her family,—the belief which she seems to have firmly entertained that her daughters as they grew to womanhood were trying to supplant her in the control of her household,



—the belief so held and acted upon; these indications, conjoined with her frequent headaches, her sleeplessness, her irregular habits of taking food, the convulsive attack in church, the appearance of the prisoner in his interviews with her, the condition of the circulation (100 to 140 beats in a minute,)—these were the most prominent indications on which he rested his opinion. From her appearance he was led to think that, at some time of her life, she had had some convulsive disorder, whether of the nature of epilepsy affecting the nervous centres, or whether it had its origin elsewhere, affecting only the spinal column, he could not determine. The latter he called infantile convulsions. As to the question whether she was sane or insane in June, 1864, his mind was involved in some doubt. He was unable to say that in his opinion, positively, and without qualification, using the term “insanity” in its ordinarily received acceptation, she was then insane: he used the words “unsoundness of mind” and “insanity,” ordinarily convertible terms, making in this case some distinction,—not using them as precisely convertible terms. As to any apparent delusion, he was not prepared to say that there was delusion; neither could he positively say that there was not: he entertained a doubt about it, and it was partly on that that he hesitated to pronounce positively upon the insanity. The case was a marked departure from the class of cases to be classed ordinarily as insanity. The facts immediately surrounding the crime were not so fully developed as to make a complete case, upon which he could rest a positive and unqualified opinion. From the incompleteness of the case he could not give a positive opinion.—After hearing the rebutting evidence, Dr. Cook being recalled, gave it as his opinion, founded upon all the facts given in evidence on the trial, and upon his personal examination of the

prisoner, that she was insane in June, 1864; and in answer to a question of the Court: Whether he discovered any essential difference between the evidence upon this trial and that upon the preliminary one which he had heard, he explained that the former evidence was given to him in a very hasty manner, and being immediately called to the stand, he could not give a decided opinion. Since then he had given a special attention and care to the case.

Dr. Gray, Superintendent of the State Lunatic Asylum at Utica, New York, had from time to time had interviews with the accused during her imprisonment between January, 1865, and the time of the trial, on several occasions, and had heard all the evidence on the trial; and taking both together, he would say that she was sane in June, 1864. From his interviews with her, taken collectively, after examining her as to her past life; as to her health in childhood and girlhood, and as she came up to womanhood, through her married life; as to the crime with which she was charged; and as to her intelligence;—going over the *minutiae* of her whole life and habits so far as she would communicate them,—he formed the opinion that she was a woman of very little intelligence, not cultured, and of a very low grade of intellect; of high temper; her pulse varying under conditions of comparative calm and high emotional excitement from 88 to 120; of a very impressible nervous system, and of a highly hysterical type; of little religious knowledge; and very familiar with her household affairs, which seem to have been the entire sphere of her thought and action through life. As to the reasons on which he based his opinion of her sanity at the time of the homicide, the fact of hereditary taint, which he conceived to be very strongly marked in the maternal branch of the family and shown to appear in

collateral branches, accounted for her peculiar constitution of mind and body, inheriting the predisposition to the disease. The convulsions in childhood, during the period of dentition (although he would not say teething was the cause,) probably arrested her development at that tender age of earliest development, as inferable also from the fact that she was a dull, strange, disagreeable, unplayful, taciturn, unsociable child, whose society was shunned by her sisters. Touching her development to womanhood, he accepted her own declarations to him, that her functions were probably regular, and that she was in ordinary physical health. There was nothing to show that during that interval there was any departure from her ordinary health. It was "as good as the common run of women;" bearing children rapidly, nursing the most of her children, and menstruating during a portion of the time of nursing, suffering much from headache all her life, from backache during the nursing, and at one time from what she called a child-bed fever. He enquired particularly as to her climacteric period for the months preceding November, 1863, wishing particularly to know whether she had been unwell before or after the death of Mary, but was not able to get any information. Her account of the family relations was about the same as has been testified to: she complained that her daughters had not been obedient, and that there had been troubles and disputes between them. From the period of early womanhood, in order to arrive at an opinion, he had to consider this ailment or defect which she had,—that she was entirely uneducated,—that she had no cultivation, except what she got by rubbing against society,—that she was suspicious and envious, with the vanity of a weak, feeble-minded woman. The question then presented itself respecting her relations towards her sisters



and others, and he was satisfied that their general treatment of her accounted for her moody, irritable, and variable conduct towards them. She complained of them and did not seem to like them. On a mind of more strength, there might have been a different result,—another impression. She would detect that they, during all this time, must have felt that she was an inferior person. Her treatment of her daughters was what might very properly be said to be unnatural in a woman of intelligence who appreciated her duties. The evidence to his mind was that she got a dislike,—that she was cross, irritable, ugly, and repulsive. These girls were educated girls, above their mother in education and culture in every respect. They wished a progressive state of things in the household; and if she had been an intelligent woman she would have accepted it. She had a pride in being supreme. He had discovered no evidence of a delusion arising out of a disease of her brain: the word perversion or distortion might apply, but that he attributed to defect in character and not to disease. That is not evidence of the actual disease of insanity. She is a person of modified *moral* responsibility. There are different degrees of responsibility measured from the intellectual and moral *status* of the individual. Taking the common definition of the terms *sound* and *unsound* of mind, she was sound in her degree compared with her capacity. She did not originally develop what she might have developed, and there is a defect in the development of the intellectual faculties. Both physical and mental defect exist in her. She had jealousy, suspicion, and distrust, which are common to sane and insane. The real wrongs she complained of might not have affected some minds,—intelligent minds. Many sane persons might act from very slight causes. He saw no element of disease in

the case, of active, operating disease of the brain. There was no delusion: she had perverted views from misinterpretation of the conduct, intentions, and feelings of others. This weak woman misinterpreted the motives and feelings of her daughters. Insanity is a physical disease; and these things are the symptoms of the disease, and whether a delusion is a diseased delusion is a question of fact and not of science. The existence of insanity is only detected by taking the whole case into consideration with all the symptoms: these vary in intensity. The indulgence of high temper would not of itself produce insanity. There was slight evidence of a fall, but he hardly thought there was anything in the case to connect her condition with that fall. He distinguished between a defect and a disease: a child might have a blow on the head which would produce a defect. In incomplete insanity a person may talk rationally on various topics: there are persons with whom you may talk without discovering insanity. He had never seen a case of *monomania*: he did not use the word; but in medico-legal works it was given as a distinct kind of insanity. It is defined to be where a person is insane upon one subject, and sane upon others. Being asked if he doubted whether there is any case of a person being insane upon one subject without touching all, he said it would be going into the region of metaphysics, and he was unwilling to follow the subject there. He had known of insane persons competent to write essays, do acts of business, and have correct views upon certain subjects, without exhibiting insanity, as Cruden writing his *Concordance*, Dr. Adler his *Dictionary*, and of several insane persons giving Fourth of July orations. To a question by the Court as to his meaning when he spoke of modified responsibility, he said that he meant *moral* responsi-



bility, and not the *legal rule* of responsibility. Medical writers mainly concur as to the causes of insanity, and in the general outlines as to the indications and symptoms: one great point of difference is upon the question of homicidal impulse.

Several medical men, non-experts, were sworn as witnesses, whose evidence fluctuated from unformed opinions, through various grades of doubt, up to positiveness; but as their views are sufficiently represented in the copious abstracts given of the opinions of the experts, it is only deemed necessary to say that the greater part inclined towards insanity, and should therefore weigh, numerically, in behalf of the defendant.

The report of the trials does not contain the arguments of counsel, and we can only judge of the respective theories of the government and the defence, by the character of the testimony and the charges of Justice Mason, which are fully reported; and so much of them as pertains to the question of insanity and the medical opinions, are here extracted.

On the preliminary issue, he said to the jury, "The law always places great reliance on facts proven, and, as a general rule, the jury are to take these facts alone, in considering the questions before them. In some cases, however, the opinions of experts are permitted to be given to the jury,—not necessarily conclusive or controlling, but to aid you in finding a verdict. I regard them as very safe guides. We need aid and assistance in solving these intricate questions, and are very much obliged for the assistance they render: but the jury are not to cast aside their own judgment, nor should they set up their own judgment against the clearly and positively expressed opinions of these experts. The reason why the laws have allowed us to call these experts is the obscurity which surrounds mental disease. Its

cause and *indicia* lie beyond the line of ordinary knowledge, so that laymen are not able to understand and comprehend them without such assistance. \* \* \*

If there are rational doubts upon the question of her present sanity [the defendant] should not be put upon her trial. That seems to be the rule, and you should in this instance take it as your guide in determining this case. But I ought to explain to you what that rule is. The same rule applies upon this trial [of present sanity] as upon the trial of a prisoner upon an indictment. If there are reasonable doubts of the prisoner's guilt he should be acquitted. \* \* \* The rule expressed in the books is of rational doubts. It does not mean *speculative* doubts, because there is no case tried but that speculative doubts may be got up over it. There are few cases, if any, where such doubts may not be entertained. How do you know but that a man who swears that he saw a crime committed, lies? How do you know but that a long train of circumstances pointing to the guilt of a prisoner, may lie? We do not know: we cannot know. We never can demonstrate it as a problem is demonstrated. All that we ever expect to attain in these cases is reasonable moral certainty. I do not know any better rule to guide you than to say that the rational doubts which arise in your minds to the benefit of a prisoner, are not such as arise after the reason and judgment of the jury are thoroughly convinced of the facts. The prisoner should be put upon her trial, if your reason and judgment are satisfied that she is now capable of reasonably conducting her defence,—that she has not such intelligence that she is capable of making a rational defence: not that she has the capacity or shrewdness to grasp all the points of the case as her counsel would; because the poor, weak criminal, who knows but right and wrong, can be put



upon his defence, and every such person is capable of making a defence, unless there is some mental disturbance which prevents it. That brings us to the question which you are to determine in this case, and that is, Is this woman now insane? If so, she is incapable of making a proper defence. If she is not insane, she *is* capable, with the aid of her counsel, to make a proper defence."

The charge went to the jury without exception in any point, and they found the defendant sane.

In charging the jury on the main issue, involving both the guilt and the sanity, Justice Mason on the question, "Was [the prisoner,] under the law, a responsible agent?" said:

"If insane, as the law interprets insanity, she was not: if sane, as the law interprets sanity, she was responsible for the act. My experience in trials of this kind has satisfied me of the obscurity and perplexity that are many times presented in solving the question of insanity. It certainly is perplexing, both to laymen and to the medical profession; and when we go into the books and look for the *indicia* upon which we are to determine a question of sanity or insanity, or ascertain whether a given act is consistent with sanity, we are led into this wonderful confusion, arising from the fact, that the same person, whether sane or insane, has the same emotions, controlled only by a different influence: consequently, if you ask the medical witness whether such and such an emotion is consistent with insanity, he will say "Yes;"—is such an expression consistent with sanity? "Yes." The reason for this is that the same emotions will crop out, whether the person is sane or insane. The case is to be determined by you, upon the evidence, in this branch of the issue; and I will very briefly submit it to you, with such views as

my duty requires. \* \* \* Our law has fixed a standard and measure of intellect to which it brings all persons, and holds them responsible for the crimes they commit. Any person who has a capacity to understand the nature and quality of the act, and to know that it is unlawful and morally wrong, under our law is responsible, whatever perturbation or weakness of intellect there may be in the case. The rule is well stated by Judge Beardsley, in the case of Freeman, as follows: "Where insanity is interposed as a defence to an indictment for an alleged crime, the inquiry is always brought down to the single question of capacity to distinguish between right and wrong when the act was done. \* \*

The insanity must be such as to deprive the party charged with crime of the use of reason in regard to the act done. He may be deranged on other subjects, but, if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal." In a recent case in the Court of Appeals, Judge Denio lays down the same rule. (*Willis v. People*, 32 N. Y., 715.) By this standard you are to try this issue between the people and the prisoner at the bar. All the evidence in this case,—as well the evidence to establish fact, as the evidence of the medical witnesses,—must be brought down to this one test. It follows, therefore, that if, when we consider the medical testimony it does not square with this standard, the opinions of the medical men are not to control you. I entertain the highest estimation of the medical profession. I am not one of those who think it advisable to send them from the Court House. They are useful men, and often aid a court and jury in rendering a correct verdict. There are, in the manifestations of insanity, many *indicia* that lie beyond the scope of the common mind; and when

the medical evidence consists of *a scientific opinion upon conceded facts*, it is entitled to respect and consideration from the jury. \* \* \* So far as the opinions of medical men upon questions of *science and skill connected with their profession* are concerned, they are safe guides for us. When their opinions involve the determination of a question of fact, they are not guides any more than any other men, and their opinions are not controlling in the case. Upon the question whether the prisoner at the bar was acting under an insane delusion, in reference to her relatives and her children, Dr. Gray and Dr. Brown may be said to have differed, and Dr. Rhoades and some of the other physicians, I presume. I ought to say that if these opinions are pronounced upon deductions that they have drawn from the evidence, and not from any matter of skill or science, then their opinions do not control us. It is proper for me to say to you, that if the opinions of the witnesses which they have declared before you here of the insanity of the prisoner, cannot be squared by the stern rule of the law, if the prisoner had sufficient mind and intellect to know the quality of the act which she committed, and to distinguish between right and wrong, it matters not how the grade of intellect is,—the law holds her responsible. \* \* \* These medical gentlemen are led to the conclusion that there are certain modified responsibilities, attaching to persons more or less disturbed in their intellect. Dr. Gray said he regarded the prisoner at the bar as a person of modified responsibility, and he meant *morally*, and this is not the rule of medical men alone, but the rule of all. But when you come down to the *legal* rule of responsibility, every man is to be held responsible for a given degree or measure of intellect or capacity. \* \* \* I ought to say to you that while we should pay all proper



respect to medical witnesses, we are not bound by them. Go to the first case in infancy. If these convulsions were clearly proved to be of a certain character, they would evidence brain disease. The difficulty is, what caused them. Children have fits and convulsions from various causes, and this is barely adverted to by the physicians. The fall is the next, and the injury upon the head. If it injured the brain, it might have solved this case. The question is: Did it? Were these epileptic convulsions, or were they something else? None of the physicians have stated that they were. What was the fit in the church? Was it *hysteria* or *epilepsy*? If it was epilepsy, it indicated a disturbed state of the brain, at least; if it was *hysteria*, it was not indicative of insanity. \* \* \* When you come down to the question of what is destined to be the real point in this case to establish insanity, and that is, *the delusion*, it is said to be upon the question of her relations to her daughters; and the defence urge the idea that she had a delusion that her daughters intended to dethrone her in her family, and take the reins into their own hands. The Attorney General denies this, and takes the ground that the case is so destitute of evidence upon that point, that you should not attribute her conduct and declarations to mental delusion, or to insanity upon that subject. Here is the point wherein the medical men come in collision. Dr. Gray sees no evidence of delusion in her, and says that there is no evidence in the whole case of any mental hallucination. Drs. Brown and Cook think they read here a delusion in the mind of the prisoner. You must solve the question in the light of all the evidence in the case, paying all due attention to these opinions. So far as they result from different conclusions upon the evidence, you are not to take them. There are two theories here.

The counsel for the defence claims that the case is so destitute of any proof that such a state of things could have existed, that there is a hallucination; while the attorney-general claims that those feelings were brought out by a state of things that did actually exist. \* \* \*

There is in this case—if you find that here was nothing to constitute a just cause for such a state of feeling upon the part of the mother—reason to believe that she had a delusion that her children really meant to dethrone her in the government of the family; and the question then recurs, Was that delusion one that so overthrew the intellect of this individual as to render her irresponsible in law for her acts? Had she a delusion in reference to this very act of crime, which did not allow her to appreciate that she was doing a wrong act, but which led her on, against her will and reason, to its commission? If she had, she was not responsible in the law: otherwise if she had not. \* \* \*

Although she might have thought that the daughters were wronging her, yet did she think it was right to kill them? Did her delusion go to the extent of justifying her in her act? Was her reason so far overthrown by the delusion, or the error, that she thought her relations to her children were different from what they really were? \* \* \*

From the evidence in this case, are you satisfied that the prisoner at the bar had an insane delusion,—such an insane delusion as deprived her of the power of will, and of the ability to understand the nature of the act that she was committing, and of the knowledge and appreciation that it was morally wrong? If so, your duty is to acquit her; if she had not, she is not exempt upon the plea of insanity. \* \* \*

Our law permits not the conviction of persons where there are reasonable doubts of their guilt. I should say to you precisely what I mean by that. There may,

in every case tried in this forum, be doubts raised as to whether a fact is proved or not. If two men come up and swear to a homicide, we take their evidence and convict. We have no knowledge whether they have committed perjury. Reasonable doubts are not doubts which may arise in a speculative mind, after the reason and judgment are thoroughly impressed with the guilt of the prisoner. \* \* \* If the case is proven, as the government claim, against the prisoner, it is your duty to convict her, if you find her to be a responsible agent. \* \* You have the rights of the prisoner and the people in your hands. You should hold to the stern rule of the law, but give her the benefit of all reasonable doubts."

The defence asked the Court to charge the jury, that, "if, upon the whole evidence in the case, the jury should find that by reason of insanity or imbecility, or other mental unsoundness, the prisoner was unable to know the nature and quality of the act which she committed, and that such act was morally wrong, it will be their duty to acquit her:" to which the Court said, "That involves the question of insanity and of intelligent capacity. I feel constrained to say to you, (addressing the jury,) that if there is no insanity, there is nothing in the proposition. This woman has lived through a life that has developed a degree of capacity and intellect, showing that she is not of that low standard, unless there is mental disturbance. She would not be irresponsible under the law as an idiot is not responsible, unless she is insane; but I do not mean to rule upon that question, but to leave it to you."

This remark of the Court, was excepted to, and several other exceptions were taken, of only one of which did the Court take particular notice, and for that purpose called the jury back. "I desire to say to you that



an exception has been taken to my charge in reference to a remark I made, in regard to the fit at church. I remarked that, if that was *hysteria*, or what is commonly known as hysterics, it is not evidence of insanity. What I mean is, that *hysteria* is not insanity; but I do not say that that circumstance is no evidence in the case to be taken into the account by you, in considering the question of sanity or insanity. As I was understood to take that question entirely from your consideration, I call you back. I intend to say that *hysteria* is not insanity, *per se*." Other exceptions were made; the usual last bubbles of the subsiding effervescence of counsel, and their customary parting salutes to Court and jury; which disappeared with the occasion, and were not again revived. A verdict of guilty was rendered, and a polling of the jury confirmed it. The usual sentence followed, with ample time allowed for its execution, to appeal to the executive clemency; which was bestowed in the way of commutation of punishment, substituting imprisonment for life instead of death upon the gallows.

The charges of Justice Mason are perfectly clear, forcible, and quite unequivocal statements of the existing criminal law regarding insanity as held in this State. It is obvious from the tenor of these charges that the chief point in the case was the alleged delusion, and, if there was a delusion, the extent of its influence in regard to the criminal act. To justify the jury in an acquittal, it was necessary that they should find not only a delusion, but also that it was powerful enough to incapacitate the culprit from distinguishing between right and wrong as to the homicide, and from knowing the nature of the act. They found neither, or at least they found no delusion of sufficient power: of necessity they must have found the latter, if they found the

former, or have given a different verdict. In determining this, if biased at all by the opinions of the medical experts, they must have disregarded the numerical balance of opinions, and sided with the minority. This circumstance justifies a remark or two.

In this particular case, aside from the bare question of the guilt of the prisoner, for some reason *two* several juries found her legally sane. On the preliminary issue there was substantially the same numerical preponderance of expert testimony inclining in her behalf, that there was on the main issue.

Juries are apt to be affected by the presence and manner of witnesses to facts; by their readiness, their ingenuousness, their capacity of throwing light upon an investigation. They are struck convincingly with the air and intelligence of one witness, with his promptness, clearness, frankness, and candor; they form an unfavorable judgment of another from his embarrassment, his hesitancy, his seeming partiality, his evident foregone conclusions, his being of a side. With regard to witnesses to opinions, *experts*, juries consider that there is as much difference between them, as there is between witnesses to facts, in respect to their capacity of seeing things aright and forming reasonable opinions upon them. They examine their qualifications, they criticize their appearance on the stand, they are affected by the intelligence and frankness of their answers, they guess as nearly as they can respecting the measure and quality of their expertness, they scan their bias both of sympathy and prejudice, and in regard to favorite theories of their science, and give less or more importance to their opinions according to the impressions made by such considerations. Juries know, equally with experts, all the facts on which their opinions are founded; and they cannot but canvass within themselves the proba-

bilities of those opinions being well or ill sustained by the facts. There must be a balance of opinions, as well as a balance of facts; and the weight of opinions, moreover, is not the same thing with a jury as the weight of facts. In respect to *facts*, the jurymen say "numerically, indeed, there are more witnesses on one side than there are on the other, but, morally, we think one of the witnesses on this side worthier of our confidence than all the witnesses on that. The truth, we think, lies with him." In respect to *opinions*, they say, "the opinion of that expert on one side is more in accordance with the facts and better inferred from them, than all the opinions of all the experts on the other, and we will be guided by it." It is after all a conviction of the minds of an honest jury that governs their verdict; and they have instincts or impressions or sentiments of their own which they cannot smother, and which will leaven their conclusions, just as inevitably as a man's physiognomy unconsciously fixes our impression of his character. You cannot poll them to ascertain what particular bit of evidence, or what particular opinion of an expert, principally controls them. It is their conclusion upon the whole mass of evidence, both facts and opinions; some considerations operating upon one mind, and some upon another; and the comparison, compounding, and summing of the whole, including their inward, unanalyzed, secret and instinctive convictions, is their verdict.

In this very case, two different juries, in two different counties, on almost the same testimony, and on the same diversity of opinion of experts, came to precisely the same conclusion on the point of sanity. Such a double conclusion does not of itself make the opinions of the experts any the less valuable as opinions, although evidently, as they are opposite, some must be wrong as applications of science and experience to the



self same facts. But it shows a state of feeling on the part of juries that is on the whole favorable to the administration of penal justice upon human, social, and legal principles. They will not go over the boundary that divides facts from speculations. They are plain, but shrewd men, representing the average degree of human feelings, sense, and judgment; and where any twelve, after a long sifting and weighing of facts and opinions, come to a unanimous sincere conclusion, and particularly where any *two* twelves, on the same facts and sworn opinions, come, independently to a like conclusion, it would be presumptuous to impeach its correctness without more light shining upon us than they had. In one case, they pronounced the accused sane enough for a defence; and in the other, sane enough for criminal culpability and punishment: and, in so doing, they virtually rejected the numerical preponderance of expert opinions, in favor of the solitary contradictory opinion, because that satisfied their reason, their consciences, and the law, and the rest did not.

It is not unusual to question the intelligence and integrity of juries. As to their intelligence, there probably never was a period when better educated and informed juries were impanelled than now; and as to their integrity, it is quite equal to the average integrity of the whole people, which is not perhaps very significant praise, when we reflect how corrupt and dishonest all classes, from statesmen downwards, are generally reputed to be. It is not unlikely that in great commercial marts and in communities where wealth abounds, and men's morals are apt to sit loosely, jurymen may be swayed by the same appeals that so successfully swerve men of more pretension and position from their obligations of religion, morality, and good citizenship. It may be too, that in cases of great interest and excite-

ment, the general laxity of morals is so far participated in by jurymen as to make them more approachable than they once were by dishonest parties appealing to their covetousness or their partisan prejudices, or some other weakness to which they are as liable as other men. Juries may sometimes be so packed or sorted, badgered or cajoled, by the arts and management of parties and counsel as to render their verdicts suspicious and wholly unworthy of the name of justice and righteous dealing. But with all these casual or inherent defects, the jury system is probably a more satisfactory one to the people of those countries accustomed to it (and they are the countries where on the whole justice has been administered with more intelligence, wisdom, and satisfaction than in any other,) than any that can be devised to take its place. In general, juries are a fair index of the common sense and feeling of a people. That they should be required to be unanimous is the strongest point of exception; but it may well be doubted whether, after all, it is not the point which makes their conclusions the more satisfactory. Sheer obstinacy and doggedness may sometimes prevent or force a verdict in the face of all testimony and reason; but on the other hand, and quite as often, the conscientious earnestness of one man on a jury, may cause the ultimate triumph of justice and right by the steadiness of his adherence, and the strength of his shrewd convictions. Although there are occasional questions beyond the ordinary intelligence of juries, yet on the whole the subjects submitted to them are such as come home to men's business and bosoms, and are fairly within their grasp; and in criminal cases their error is apt to lie in clemency rather than vindictiveness.

Our question, however, is not whether the juries and the Court were right, but which opinion of the experts

was right? As the Court put it to the jury, on the main issue, it was wholly a question of delusion or no delusion in the legal sense, and that sense is well and authoritatively defined by Justice Mason. Facts, not speculation, must decide it.

As we read the testimony, there was never such a departure from her usual course of conduct on the part of the defendant, as, according to the unanimous definition of insanity given by the medical experts, gives any color to the notion of her being insane. There was no interruption of her usual health, no perceptible disease affecting the brain to cause any accession of insanity, nothing abnormal as compared with her whole life. She was either insane to the same extent from her infancy, or there is no period when she could properly be called so, comparing her with herself. Her conduct in her family and among her family connections, had always one aspect; amongst neighbors and ordinary acquaintance, it had another aspect, but quite as uniform. Her peculiar disposition and qualities to which her family were accustomed, although annoying, mortifying, capricious, disagreeable, and irritating almost to an intolerable degree as her children grew up to maturity and character, were not regarded as insanity; and those which were observed by mere acquaintances were not of a stamp to excite them to any suspicion of insanity, but simply of idiocrasy. There was one short period that might indicate a tendency to *melancholia*, but a tendency may never ripen to a disease, not even a hereditary tendency; except always the hereditary tendency to decay and death, which is ever infallible. On the whole, there does not appear to have been any departure, prolonged or otherwise, from herself, caused by disease. What was peculiar in her conduct was the tenor of her whole life. She may possibly have been



crazy, as she certainly was peculiar, all along; but there was no obvious departure from herself, that sure index of insanity.

A departure from one's self, does not, however, mean every change that may occur in the conduct or mode of life. If it did, the wicked forsaking his ways and the unrighteous man his thoughts, or the righteous man lapsing into temptation and vice, and going widely and permanently astray, would fall within the category. It means that a man should at some time, and for some time, perhaps always afterwards, run counter to his natural life-long bent and feelings; fork off sharply and more or less suddenly from the path he has always traveled, and strike an inexplicable tangent to the circle of his usual movements; pursue some errant and cometary track instead of his accustomed orbit; and all without obvious rational purpose or design. If we see a naturally grave man all at once assuming an extreme gayety and frivolity of manner; a noted miser all at once become an equally noted spendthrift; a genial, witty, and hilarious man all at once turn into a demure, sour-visaged, misanthropic one; we may well suspect all these men, judging them by the standard of their own individual life and character, to be insane. They have emphatically departed from themselves; and we fairly infer that disease, manifest or obscure, is at the bottom of it. A man who pursues a pretty constant manner and course from childhood to old age is usually sane. Although he may be a weak man, or a perverse one, or an eccentric one; although he may never have been strongly and particularly sane; yet, relatively to himself, he is as sane as he ever was. It may not be the highest degree of fully-developed stalwart sanity; it may be even less than the medium degree of it, tapering in various shades towards the stolidity of idiocy; but

he is not therefore insane. He may sadly lack self-control, be very dull in his moral sense, very weak in resisting evil, and very devilish in all his propensities; but he is not therefore insane.

Applying such principles to the case in hand, we discover no insanity to begin with, and therefore nothing to found a palliating delusion upon. But allowing that there may have been so much unsoundness, physical weakness, defect, or whatever it might be, as would constitute a sufficient basis for an insane delusion, was there really any such delusion?

What is really true can be no delusion. Illogical deductions, obliquity of mind, obstinate perversion, odd fancies, may distort or invert the truth, and wrap it in a false and deceptive garb, just as a fanciful or excited eye may shape a cloud into a camel or a whale. Jealousy may produce delusions, suspicion may, passionate love often does; (for that matter, according to the poets, we are all crazy once in our lives, "*semel insanivimus omnes*;"<sup>32</sup>) but they are not necessarily insane delusions, however hurtful, or however pleasant. Othello's frenzy, which is generally attributed to jealousy, although Coleridge very ingeniously doubts it, and which provoked a homicide and indirectly a suicide, was not an insane delusion: it was a real, logical, well-founded belief, upon facts which might have misled the sanest mind, except Iago's who contrived them. The particular facts that impressed both his reason and his imagination were individually true, but were so put together and distorted by artful villainy, "entrapping," as Lamb says, "a noble nature into toils against which no discernment was available," and so suddenly sprung, as to allow a quick, passionate, and ardent sensibility no opportunity to scrutinize and detect the real weakness of the fatal meshes which snared him. He was imposed

on, and in that sense deluded; overpowered by a conviction of connubial treachery, which wrought him to a frenzy of passion; but there was no delusion of insanity.

In this case which we are considering, the delusion, if any, confessedly sprung out of a jealousy or a suspicion of the mother that her daughters were aiming to displace her in the management of her household; that they were obviously acquiring a superiority over her. Notwithstanding her low and feeble intellect, and perhaps the more sensitively on that very account, she was still conscious of a growing disparity unfavorable to herself. It was galling to her pride, and irritating to her temper, and stimulated her peevish and revengeful spirit. Although it is difficult for well regulated and ordinarily right-feeling minds to conceive that such sentiments should ever in real life rise to so desperate a pitch as the deliberate homicide of two daughters; yet history and criminal records are too thick with like instances of the tremendous and awful force of evil and indulged passions to allow us to doubt the possibility. All the Jezebels, the Messalinas, the Gonerils, and the Lady Macbeths are not extinct. Strong as the instinct of maternity naturally is, we know that in many countries, if not quite obliterated, it is constantly and remorselessly violated; and even in this country, so frequently as to diminish our wonder if it should reach to the untimely removal of adult offspring. It is wickedness, more than insanity, that prompts to feticide and infanticide; and the same diabolic spirit that suggests these requires very little maturing to efface natural affection and to dispatch children of a larger growth. The son of Sirach who could say, "Forego not a wise and good woman, for her grace is above gold," also said, "All wickedness is but little compared to the wickedness of a woman." It has no equal for intensity,



especially when the meaner passions are aroused; and therefore Shakspeare puts it into the mouth of Albany to say to Goneril,

“Proper deformity seems not in the fiend  
So horrid as in woman;”

what we should tolerate in a devil as a natural characteristic, is more horridly devilish in a woman and a mother. “Hell hath no fury like a woman scorned;” or like an envious and malignant one, as described by Ovid, (in Addison’s version,)

“Who never smiles but when the wretched weep;  
Nor lulls her malice with a moment’s sleep;  
Restless in spite; while watchful to destroy,  
She pines and sickens at another’s joy.”

All this is within the compass of human depravity; and wretched insanity should not be compelled to father such monstrosity on prepossession, begot of the devil.

In letters of Paul to his Roman brethren and to his young friend Timothy, still extant, and good strong reading, he describes a class of cases familiar in his day, under a nomenclature more significant and characteristic, and far more sonorous, than the modern “barbarous vocables,” *kleptomania*, *pyromania*, *oinomania*, *pseudomania*, *didolomania*, *oikolomania*, *fanatico-mania*, *politico-mania*, and the like, which define and cover acts and habits that we are permitting to seek the shelter of insanity for protection. In one or other of the subdivisions of Paul’s comprehensive class, and perhaps in two or more of them, a judge, or a divine, or a moralist of a hundred years ago would likely have ranked this case. It would fit in well among the *Astorgoi*,—those without natural affection,—or the *Phthoneroi*,—those full of envy or suspicion,—or the *Asunetoi*,—those without understanding,—or the *Anel-*

*cēmonai*,—those incapable of mercy; all subdivisions or species of the great genus that Paul does not hesitate to stamp as *Reprobate Minds*; which is a mild way, perhaps, of calling them insane in Bible Greek. His appellatives have a scriptural force and meaning in them which is more level to the comprehension of juries than the palliatives of modern invention; for juries not only have a strong touch of natural religion, but a tincture of St. Paul's sort too, and are apt to think there is some crime left outside of insanity, though all wickedness be folly, which is next of kin to it. The great Christian moralist, who was brought up moreover at the feet of that distinguished lawyer Gamaliel, does not incline to consider the cases which he enumerates, with much leniency, whatever color they may be varnished with, but denounces them with sharpness, as no better than heathen vices of the most horrible stamp. They are not in themselves indictable at common law, and can only be handled by the penal code when they come to a head in robberies, homicides, or other violence; which in these latitudinarian and sympathetic days, we attribute, with the kindest and most reverent intentions, to a visitation of God, instead of the instigation of the devil; who, before *oilkomania* and the like were invented or discovered, was uncharitably presumed to be the putative, if not the real, father of them all. We have dropped the devil and his seducing and moving instigations out of our indictments, and admit such proof as ingenuity can devise of the visitation of God for both the provocative and the palliative of the most shocking crimes and enormities. The humanity which prompts this is no doubt very kind and pleasing to those for whom it is indulged, and to those who indulge it; but it is very baneful to public justice and penal laws: it is a humanity which

sacrifices social protection and social order to individual indulgence; to "loose life" and "unruly passions," more than to "diseases pale." We strip justice of her vital attribute, severity; and indulge mercy in her fatal weakness, impunity. It is thus, that, in the nervous language of South, "we persuade a man that he may cheat and lie, steal, murder and rebel, *by way of infirmity*, without any danger of damnation"—"a direct manuduction to all kind of sin."

A tendency to *melancholia* was said to have manifested itself at one time in the culprit; and *melancholia* is such a genuine phase of insanity, as commands pity and indulgence. There is not commonly much that is impulsive or violent in its manifestations; but rather, except in extreme cases, the reverse. It prompts oftener to suicide than to homicide. But it is odd that under its more common name of hypochondria, (pure and simple *hypo*,) it should always have been a common theme for petty sarcasms and jests, more than for grave and tender commiseration; as we laugh at hysterics, but put on a sober face with *hysteria*. But hypochondria would be a poor defence against a criminal accusation. Perhaps it is because so many have it, that it would nullify the whole criminal code and all criminal punishment. Lord Byron called it an "impeachment of a liver complaint." It is now, under a more intense name, sought to be made an impeachment of the mind and will; and is held by some to incapacitate one from committing any indictable, or at least any punishable, wickedness. Hypochondria tends to melancholia, and is in fact an incipient or nascent stage of it, but probably in nine cases out of ten does not reach to the height of insanity. At all events, a *tendency* to melancholia is not of more import than a hereditary tendency to insanity generally. It may run along a



whole life without becoming a disease affecting the brain, or excusing anything more culpable than a breach of good manners, an irritable temper, or a general disagreeableness of conduct. That sort of melancholia the culprit may have had, as thousands have it, without affecting her responsibility legally, and perhaps not very much morally.

Humanity is daily invoked to confound legal and moral considerations in criminal cases, and to undermine the penal code by admitting the opinions of speculatists to sway the judgment of juries. Particularly in highly penal cases, there is a persistent effort to encroach upon and modify the established rules of law applicable to them as narrow and constricted, and unworthy of a humane and generous age. This spirit of humanity would make courts of criminal law forums of conscience and casuistry, governed by some divine insight into human motives and the comparative power of every man over his will and passions, to be tested by the application of some speculative science or theory. Whenever any such science shall be so perfected as to unravel the mysteries of the workings of men's minds and impulses, in health and disease, by certain infallible deductions, it will be time to modify legal rules to accord with it. In the meantime we must reflect that these rules are of human invention and experience, devised for common use and application, and for the vast majority of men. They are founded on a broad, general principle that there is a great deal of bad conduct, growing out of bad passions and habits, that requires restraint and punishment. They go upon the general sense that sanity is the usual and typical state of man, and that insanity is an unusual, exceptional, and unhealthy state, suitable to be watched and guarded, but not to be punished. Therefore the penal

law excludes insanity: every insane person is exempt from its operation. That is a sure means of escape when there is no other. Of course every culprit will seek such an open door, and ingenuity will be taxed to its power, as we see daily, to secure his flight through it. Modern improvements have somewhat to do with this. It was formerly less dreadful to suffer the punishment inflicted upon crime than the horrid humanity of a mad house, or the chains and strait jackets of private confinement; and a conviction for guilt was more tolerable than an acquittal for insanity; the prison or the gallows was a preferable alternative to the notorious mal-treatment of madness. But when the asylums made confinement somewhat more agreeable, with less disgrace, than the prisons, then the plea of insanity, which was a respectable toning down of the ferocious old name of madness, became popular in a double aspect; it both saved and provided for the criminal, and pleased his friends, who at a stroke secured his escape from infamy and punishment, and themselves and society from his dangerous association. Hence, every odd look, every downcast and weeping eye, (and "what," says Ecclesiasticus, "is created more wicked than an eye? therefore it weepeth upon every occasion,") every silly laugh, every eccentricity of conduct, every hypochondriac turn, every physical weakness, every heat of passion, every natural frenzy of excitement, every impulse to evil act, every defect of self-control, is twisted and tortured, by sympathising friendship or by empirical science, into some significant index of insanity. This will never do. It is contrary to reason, to justice, to social protection, to all human experience, and to all divine law, however conformable it may be to some fanciful and super-humane speculations that have the air of science without the truth of

it. There must be a staunch safeguard somewhere; and the law has set it up as nearly right for all practical purposes and for a general rule of discrimination between crime and innocence, as human wisdom is likely to hit. If a man knows what he is about when he is doing a thing, as to the right and the wrong of it, and its consequences, he is legally responsible for what he does. If he does not know, he is not legally responsible; he is insane as to that act. That act is what the tribunal is to judge. It was his act; it was wrong; and he knew it at the moment; therefore he is guilty of it, and the law has affixed a punishment for such guilt. If there be error in the finding, or cause for remitting or moderating the penalty, the same law has provided against its own errors and its own severity. It has provided a pardoning power which may either cancel or modify the punishment. This is the best that human law can safely and wisely do. It is a candid acknowledgment of its own imperfection and lack of omniscience, and the best provision it can make for its occasional ill consequences. If his conscience acquits a man of guilt, and the sovereign human clemency is not satisfied of his innocence, Omniscience will weigh his conduct in a more delicate scale than He has intrusted to clumsy human wisdom, and will hold him acquitted at "the great day of examination of the whole world." This may be a poor present consolation for undeserved punishment; but many a good man has had to be content with it; and all must, so long as human affairs are directly conducted by human beings.

For neither men, nor tribunals composed of men, are infallible. No human law, and no human application of divine law, is, or ever will be, perfect. The prevailing tendency of this age is, on some revived old theory which retains just spark enough among the ashes of a



former explosion of it to be raised into a fresh scintillation, to attack, openly or treacherously, the tried safeguards of society, law, philosophy, and religion, and open both the world of action, and the world of mind, as a free common for all sorts of vagaries to "browse and batten in." We are losing veneration for the ancient landmarks; indeed we do not seem to know where they are, or were, and are setting up new ones, as if none had ever existed, or all were buried in ruins. We are too busy with current affairs of wealth-getting or partisanship to pay attention to great principles, unless they be new, or new varnished; and the old are rusting out of mind. A thousand years' test of them avails nothing before a hurricane of vague theories and oppositions of science, that the next moment subsides, leaving a waste of tremendous ruin to be contemplated with amazement, and to be reduced to order by the toils and experience of another thousand years.

There is a strong proneness to forget, in the conflict of new philosophies and the effort to apply metaphysics in the regulation of human affairs, that accountability under human laws and accountability under divine laws are different things and gauged by different standards. What Lord Brougham, who added the acuteness of a metaphysician to the wisdom of a legislator, and had the mastery to keep his faculties clear each way, once said in the House of Lords, is so pertinent to this point, and otherwise so applicable to this particular case according to our apprehension of it, that we cannot hesitate to quote his high authority. "With respect to the point of a person being an accountable being, that is an accountable being to the law of the land, a great confusion had pervaded the minds of some persons whom he was indisposed to call reasoners, who considered accountability in its moral sense as mixing itself

up with the only accountableness with which they [the House of Lords] as human legislators had to do, or of which they could take cognizance. He could conceive of the case of a human being of a weakly constituted mind, who might by long brooding over real or fancied wrongs, work up so perverted a feeling of hatred against an individual that danger might occur. He might not be deluded as to the actual existence of injuries he had received, but he might grievously and grossly exaggerate them, and they might so operate upon a weakly framed mind and intellect as to produce crime. He could conceive that the Maker of that man, in His infinite mercy, having regard to the object of his creation, might deem him not an object for punishment. But that man was accountable to human tribunals in a totally different sense. Man punished crime for the purpose of practically deterring others from offending by committing a repetition of the like act. It was in that sense only that he had anything to do with the doctrine of accountable and not accountable. He could conceive a person whom the Deity might not deem accountable, but who might be perfectly accountable to human laws."

The part of metaphysical science which approaches closest to the confines of physical science is psychology. It is the

"——— nearest coast of darkness  
"Bordering on light;"

and so far as experience affords a reasonable demonstration of the reciprocal action of the body and the mind, and shows an intimate and blended interaction marked by such indicants and contra-indicants as point out satisfactorily to the cautious judgment of a scrutinizing medical expert what treatment is due to cases of that

compound character, so far it may be within the purview of physical science, and as such may be the subject of legal consideration. So much of the philosophy of the mind as recognizes distinctions in its faculties which are every where and commonly allowed, and enter into and mingle with the staple of human knowledge and experience, is so ingrafted or imbedded in physical science as to be in current use and allowance for a part of it. Thus we recognize, without a cavil, the distinctions of will, memory, association, and imagination, which we know by our own consciousness and by experience not only vary in different minds, but are positively affected or disturbed or obliterated by certain ailments or lesions of the body. If a medical observer tells us that it is the constant unquestioned experience of his science that a particular disease deranges or prostrates the functions of the mind, or some of them, we believe that as readily as we believe that death prostrates them all. It is a phenomenon that involves no more metaphysics than the elemental principle that there is a body and a mind somehow mysteriously connected. If he tells us that his science shows that a disease of the liver depresses the mind; or a nervous disorder disturbs or confuses it as an usual accompaniment or result; or a lesion of the brain produces, according to the form and extent of it, more or less imbecility of one, or the other, or all of the mental faculties, and in every variety of gradation up to a complete loss of them; all this we believe on his testimony as an experienced scientific man. We see all these results in our own experience and observation, and his scientific solution of the cause of them we admit, because he and a long list of prior observers have found that such results have constantly followed from such causes, and have never, or not often, or not



so invariably, followed from other physical conditions. All this is legitimate. But when we go farther we get into a region of clouds and darkness. We get, to be sure, into a field where many of the acutest human intellects have gravely disported, and displayed the most remarkable subtlety of thought and reasoning; into the region of pure mind considered abstractedly from physical objects. Thither, as one of the experts in this case replied to the artful inquisitiveness of counsel, designed doubtless to entrap him among the pitfalls into which some of the wariest experts have stumbled, thither the law "cannot follow." It is subtle in distinctions of its own, but it cannot emulate the subtleness of metaphysical disputation. There is a point where the two must part company, and set up a palpable division fence which neither shall overleap; the law, with its proven facts, on one side; speculation, with its mists and confusion, on the other. It is just where fact terminates, and speculation begins. Medical science edges somewhat on the border, but it is deduced from observed facts and physical phenomena, and is a part of the common law. So is mathematical, so is astronomical, so is nautical, so is all physical science. Experts in such are good witnesses in their respective departments as to scientific deductions from conceded facts. *Cuique suâ in arte credendum est.* But what court ever called a witness to enlighten it with a metaphysical opinion? There are no allowed experts in non-physical science. Impanel a jury of the philosophers in that class, and let there be on it any twelve of them from Plato down to Sir William Hamilton, and they would not agree before doomsday on such questions within their field as might be propounded by a sharp lawyer on a nice point of insanity. Such, in the language of

another expert witness, are questions that "would puzzle the Solons of any age." The law does, and medical experts should, steer wide of that

"———— boggy *Syrtis*, neither sea  
Nor good dry land,"

lest

"Treading the crude consistence, half on foot  
Half flying,"

they be "quencht" in it. We would not disparage metaphysicians, although it puzzled Cowley, with all his power of obscure conceits, to know "whether metaphysic be anything or no." It is one of the finest and noblest exercises of the human mind to study itself; but it is one of the mysteries that God has reserved from the full knowledge of man; from more than the dimmest rays of it; perhaps for the purpose of sharpening his faculties to some ultimate useful end by whetting them upon each other to that keen edge which sometimes splits hairs so finely that the most microscopic intellect cannot distinguish which ninth part of one it cavils on. Here, we say, the law common, statute, or even the revealed law divine, does not follow. The divine law was first promulged from the thick darkness where God was, with awful thunderous shadows resting upon Sinai to conceal his brightness, as if to intimate that beyond God's absolute revelation nothing was to be penetrated by human insight. Into the thin, vapory skirts of that dense darkness we may somewhat penetrate, but all that we discover is thin and vapory too; and it is safer to be blinded by such a designed providential obscurity, than by an excess of that "unapproached" light that would more painfully and effectually quench our mortal gaze.

If there was really in this case, as the defendant

insisted there was, and as all the evidence to that point shows, a state of ill-feeling between her and her children, particularly her daughters; if they were really, as was very likely without any evil intent on their part, acquiring a domestic or social superiority over her, by their better education, manners and ambition to shine; and if she really, and as was quite natural for one of her narrow views, malignant mind, and spiteful temper, magnified these circumstances into something aggravating and unendurable; all this might be,—and that without any particular strain on human credulity,—without any insane delusion. It was the truth that troubled her. There might have been misconstruction of motives, exaggeration of little facts, misjudgment of feelings, and wrong estimate of conduct; but there was no delusion more than would excuse most deliberate crimes. A stronger minded, better trained, and more affectionate mother would have seen the case in a less distorted light, and would not have construed it into a petit treason punishable with death. Strong delusion may make people believe a *lie*; so St. Paul intimates, and so we see it every day; but a belief in the truth is no delusion. The experts who judged that here was a delusion of insanity, also conceded the fact of the household troubles that excited the mother and annoyed the daughters, as proven;—that such things really existed, at least to such an extent as to disturb a weak, nervous, and suspicious woman. If they believed the *fact*, how could they maintain the *opinion*? The jury were more shrewd and consistent, and finding the fact without the delusion, convicted the culprit of a murder, by a most righteous and just verdict according to law; leaving it to the Executive clemency, (not burdened by their oath to make a true deliverance,) to provide a test for its accuracy by commuting the punishment. They meant



that death or imprisonment should deprive an inhuman mother of the power of poisoning any more daughters, and that her fate should be an example to others that there is accountability to man as well as accountability to God. Two years of prison life have not developed insanity enough to impeach their judgment, or stagger our conclusions.

[ERRATUM.—For *Wilson*, on the second page, read *Wilcox*.]



